IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUM. FOR JUDGMENT NO.41 OF 2000
IN
SUMMARY SUIT NO.6678 OF 1999

Lloyds Finance Ltd. .. Plaintiff

Vs.

Peacock Inds.Ltd. and Anr. .. Defendants

Mr.T.R.Yadav i/b C.R.Naidu and Co. for the plaintiff

Mr.Niranjan Lapasia a/w Shailesh Bondre i/b Niranjan and Co. for the defendants

CORAM : S.U.KAMDAR, J

DATED : 23RD AUGUST, 2005

P.C.:

1. The present suit is filed for the recovery of sum of Rs.4,20,84,348/- under Lease Agreement dt.26.9.94 as amended by an amendment agreement dt.26.9.94 and Lease Agreement dt.8.8.95 as amended by an agreement dt.19.12.95. The post dated cheques were issued in respect of lease rentals payable for lease hold machineries which are given on lease to defendant no.1. The defendant no.2 is the guarantor and the guarantor has given a guarantee on 26.9.94 and 8.8.95 in favour of the

plaintiff herein. Suit is restricted only in respect of post of lease rentals which is represented by the dishonoured cheques.

2. Defendant has raised following defence. Firstly, it has been contended that the suit is not maintainable in view of s.22 of Sick Industrial Companies (Special Provisions) Act, 1985. The aforesaid contention is required to be rejected. In view of the Division Bench Judgment in the case of Ved Prakash Agarwal Vs. M/s.Rama Petrochemicals Ltd. reported in 2005(1) Mh.L.J. 599 in which it has been held that in respect of the suit for lease rentals provisions of s.22 of the said Act are not attracted.

3. The next defence raised by the defendant is that in para 26 of the plaint the plaintiff has sought a leave of this court to file a substantive suit under Order II Rule 2 of the CPC for claiming reliefs not forming part of this summary suit and therefore, the present suit is not maintainable as a summary suit.

4. In my opinion, there is no merit in the aforesaid contention. It is also permissible for the plaintiffs to sue the defendants for part of the claim and reserve the liberty under Order II Rule 2 for the remaining part of the claim and if such leave is granted it is open for the plaintiff to file a separate suit. Merely because some of the relief for which plaintiffs are seeking to file a suit do not form part of a summary procedure it cannot be said that for the remaining reliefs which falls under Order 37 Rule 2 of the CPC, also relief cannot be granted. Thus, the said submission is also required to be rejected.

5. Apart from the aforesaid contentions, no other contentions are raised. In my opinion there is no defence in the present suit and therefore decree is required to be passed. It is an admitted position that cheques are dishonoured which is the subject matter of the present suit and the suit is based on the said dishonoured cheque. Interest rate @ 18% is permissible rate of interest under the Negotiable Instruments Act. Thus, there shall be a decree in favour of the plaintiff and against

the defendant in terms of prayer clause (a). Suit accordingly decreed. No order as to costs. In view of the disposal of the suit, Summons for Judgment does not survive. The same is dismissed as infructuous.